

EXHIBIT 2

DAVID ALLEN JOHNSON

v.

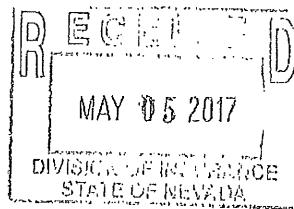
**FOREMOST PROPERTY AND CASUALTY INSURANCE
COMPANY, and DOES I through x, and ROE CORPORATIONS I
through X, inclusive.**

Case No. TO BE DETERMINED

**DEFENDANTS' EXHIBITS TO DEFENDANT FOREMOST
PROPERTY AND CASUALTY INSURANCE COMPANY'S
PETITION FOR REMOVAL**

EXHIBIT 2

**COMPLAINT FILED BY PLAINTIFF IN CLARK COUNTY, NEVADA,
EIGHTH JUDICIAL DISTRICT COURT, CASE NUMBER A-17-754637-C**



Electronically Filed
4/27/2017 3:31 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

1 COMP

2 Clay R Treese, Esq.
3 Nevada Bar No. 9923

4 THE LAW OFFICE OF CLAY R TREESE
5 2272 South Nellis Boulevard, Suite 1
6 Las Vegas, Nevada 89104
7 Telephone: (702) 727-4747
8 Facsimile: (702) 727-4744
9 Attorney for Plaintiff

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 DAVID ALLEN JOHNSON, individually,

13 Plaintiff,

14 VS.

15 FOREMOST PROPERTY AND CASUALTY
16 INSURANCE COMPANY, and DOES I through
17 X, and ROE CORPORATIONS I through X,
18 inclusive.

19 Defendants,

20 CASE NO.: A-17-754637-C

21 DEPT NO.: Department 16

22

23 COMPLAINT

24 COMES NOW, Plaintiff DAVID JOHNSON (hereinafter "JOHNSON"), by and
25 through her legal counsel, CLAY R TREESE, ESQ., for claims against Defendants,
26 FOREMOST PROPERTY AND CASUALTY COMPANY (hereinafter "FOREMOST"), and
27 each of them, avers and alleges as follows:

28 PARTIES

1. JOHNSON was, and at all times herein stated was, a resident of the County of
2 Clark, State of Nevada.

2. That at all times relevant herein, Defendant, FOREMOST was and is a foreign
3 corporation licensed to sell insurance in the state of Nevada.

3. That Defendant, FOREMOST maintains a place of business in Nevada, maintains
4 business licenses issued exclusively by the State of Nevada and its political subdivisions, hires
5 employees who work and reside in Nevada, advertises in Nevada, enters into contracts with
6 Nevada residents with the intent that said contracts be performed in Nevada and interpreted solely
7 under Nevada law, pays business taxes in the State of Nevada, and otherwise acts with the intent
8 under Nevada law.

THE LAW OFFICE OF CLAY R TREESE
2272-1 South Nellis Boulevard
Las Vegas, Nevada 89142
702-727-4747 • Fax 702-727-4748

1 to be a corporate citizen domiciled in Nevada, with an intent to remain in the State of Nevada for
2 an indefinite period of time.

3 4. Pursuant to NRCP 10(a) and Nurenberger Hercules-Werke GMBH v. Virostek,
4 107 Nev. 873, 822 P.2d 1100 (1991), the identity of resident and non-resident defendants
5 designated herein as ROE INSURANCE COMPANY, DOES I through X, inclusive, and ROE
6 CORPORATIONS I through X, inclusive, are unknown to JOHNSON at the present time;
7 however, it is alleged and believed these Defendants were involved in the initiation, approval,
8 support, or execution of the wrongful acts upon which this action is premised, or of similar
9 actions directed against JOHNSON about which they are presently unaware. It is alleged that
10 said DOE and ROE Defendants directly and proximately caused injury and damages thereby to
11 JOHNSON. As the specific identities of these parties are revealed through the course of
12 discovery, the DOE and ROE appellation will be replaced to identify these parties by their true
13 names and capacities.

14 5. That named Defendants, ROE INSURANCE COMPANY, DOE Defendants, and
15 ROE CORPORATIONS Defendants, and each of them, at all relevant times, were the owner,
16 partner, servant, officer, agent, and employee of all the other Defendants, and each of them, and
17 were at all relevant times acting within the scope and performance of said partnership, agency,
18 master/servants, and employment relationship.

19 6. At all times relevant herein, ROE INSURANCE COMPANY, DOE Defendants,
20 and ROE CORPORATIONS Defendants were agents of the other remaining Defendants and
21 were acting with actual and/or apparent authority in the conduct alleged.

22 7. The actions of the Defendants and their employees, whether or not within the
23 scope of their agency, were ratified by the other remaining individuals, corporate or partnership
24 Defendants.

25 8. Defendants FOREMOST, issued a certificate of insurance for the time period in
26 issue. This policy provided for collision and/or comprehensive coverage in the event damage to
27 his motorcycle.

1 9. On or about May 5, 2012, JOHNSON lost control of his motorcycle while headed
2 southbound on I-15 approaching Victorville, California which resulted in severe personal injury
3 as well as significant damage to the insured motorcycle.

4 10. JOHNSON submitted his claim for collision and/or comprehensive benefits to
5 FOREMOST and requested that FOREMOST conduct a reasonable investigation and reasonable
6 evaluation of JOHNSON's motorcycle and FOREMOST has failed and/or refused to pay those
7 benefits fairly due and owing under JOHNSON's contract of insurance.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

0 11. JOHNSON realleges and reincorporates herein each, every and all of the
allegations contained in all of the foregoing paragraphs, as though fully set forth herein.

2 12. JOHNSON paid all premiums due under said policy of insurance, all proofs of
3 loss were submitted under said policy, and JOHNSON has performed all conditions required by
4 the policy to be performed.

5 13. FOREMOST breached said policy of insurance by failing to promptly investigate,
6 evaluate and pay any and all undisputed amounts, and to pay any amounts due and owing under
7 the contract of insurance to JOHNSON.

8 14. As a proximate result of FOREMOST'S breach of contract as herein alleged,
9 JOHNSON has sustained damages in an amount in excess of \$15,000.00 but less than \$75,000.
0 the exact amount to be proven at the time of trial.

SECOND CLAIM FOR RELIEF

2 15. JOHNSON realleges and reincorporates herein each, every and all of the
3 allegations contained in all of the foregoing paragraphs, as though fully set forth herein.

4 16. Implied in the policy of insurance issued by FOREMOST to JOHNSON, is a
5 covenant by the FOREMOST that they would act in good faith and deal fairly with JOHNSON
6 and that they would do nothing to interfere with the rights of JOHNSON to receive the benefits
7 of said policy.

1 17. FOREMOST failed to investigate, evaluate, pay undisputed amounts, or
2 reasonably settle this claim. FOREMOST, through its agents, acted unreasonably in delaying and
3 denying the payment of JOHNSON's claims.

4 18. FOREMOST has failed to initiate a reasonable investigation, and communicate
5 timely and meaningfully with JOHNSON with regards to JOHNSON's claim, pay undisputed
6 amounts, or settle this claim pursuant to the terms of the Underinsured Motorist provisions of
7 this policy. FOREMOST has failed to conduct a prompt, thorough and reasonable investigation
8 in regard to said claim, has failed to conduct a prompt, thorough and reasonable evaluation in
9 regard to said claim, and has failed to pay any and all undisputed amounts in regard to said
10 claim, and has failed to reasonably and promptly settle said claim.

11 19. FOREMOST in its breach of its duty to adjust JOHNSON's claim in good faith
12 and to investigate every available source of information in a reasonable manner, set out in a
13 course of conduct to compel JOHNSON to institute litigation to recover amounts due under the
14 insurance policy, forcing JOHNSON to seek the legal services of duly qualified and licensed
15 attorneys or to abandon this claim or to accept a settlement of the claim below its reasonable and
16 fair value.

7 20. As a further and direct result of FOREMOST's wrongful conduct, JOHNSON has
8 suffered mental and emotional distress, aggravation and worry, all to her substantial and
9 additional damages in excess of \$15,000.00 but less than \$75,000.

21. FOREMOST's wrongful conduct as alleged herein, was malicious, oppressive
20 and fraudulent, justifying an award of punitive damages against JOHNSON.
21

THIRD CLAIM FOR RELIEF
(Violation of the Trade Practices and Frauds Act 686A.310, NAC 686A, et seq.)

22. JOHNSON realleges and reincorporates herein each, every and all of the allegations contained in all of the foregoing paragraphs, as though fully set forth herein.

23. FOREMOST is engaged in the business of insurance in the State of Nevada and
the policy was issued and delivered in the State of Nevada.

THE LAW OFFICE OF CLAY R. TREES
2272-1 South Nellis Boulevard
Las Vegas, Nevada 89142
702-727-4747 • Fax 702-727-4748

1 24. FOREMOST committed the acts referred to above knowingly and consisting of:
2 a) failing to effectuate prompt and fair and equitable settlement of claims in which the liability of
3 the insurer has become reasonably clear; b) compelling the insured to institute litigation to
4 recover amounts due under the insurance policy and/or offer substantially less than the amounts
5 ultimately in actions brought by such insured, when the insured has made claims for amounts
6 reasonably similar to the amount ultimately recovered; c) failing to provide promptly to the
7 insured a reasonable explanation of the basis of the insurance policy, with respect to the facts of
8 the insurance claim and the applicable law for the delay and denial of her claim for an offer to
9 settle and compromise her claim; d) failing to adopt and implement reasonable standards with
10 prompt investigation and processing of claims arising under their insurance policy; and e) failing
11 to settle claims promptly, where liability has become reasonably clear, under one portion of the
12 insurance policy in order to influence settlements under other policies of insurance.

13 25. As a proximate and direct result of FOREMOST's violation of statutory law,
14 JOHNSON has been damaged and has suffered as set forth above.

15 26. JOHNSON has been compelled to retain counsel to prosecute this action and is
16 entitled to recover his reasonable attorneys' fees and costs.

17 WHEREFORE, JOHNSON prays for judgment against FOREMOST as follows:

18 1. For general damages in a sum in excess of \$15,000.00 but less than \$75,000.00;
19 2. For special damages in a sum in excess of \$15,000.00 but less than \$75,000.00;
20 3. For punitive damages in an amount less than \$75,000.00;
21 4. For costs of suit and a reasonable attorneys' fees; and
22 5. For such other and further relief as the Court may deem just and proper.

23 Dated this 27th day of April, 2017.

24
25
26
27
28



Clay R. Treese, Esq.
2272 South Nellis Boulevard, Suite 1
Las Vegas, Nevada 89104
Attorney for Plaintiff